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Attorneys for Sanchez Brother Farming, Inc.

**BEFORE THE
STATE WATER RESOURCES CONTROL BOARD**

In the Matter of the Petition of

SANCHEZ BROTHERS FARMING, INC.,)
FOR REVIEW OF SECTION 13267 ORDER)
DATED MARCH 17, 2009, FOR FORMER)
BRICK-LINED PITS SOUTH OF HOUSTON)
AVENUE LANDFILL, HANFORD,)
KINGS COUNTY)

PETITION FOR REVIEW
[Water Code § 13320;
23 CCR § 2050]

Petitioner, Sanchez Brothers Farming Inc., respectfully requests the State Water Resources Control Board ("Board") to the review the Section 13267 order ("Order") dated March 17, 2009, for the former brick-lined pits south of Houston Avenue landfill, Hanford, Kings County ("Pits") issued by the Central Valley Regional Water Quality Control Board ("RWQCB") as follows:

1. Name, Address, Telephone Number and E-mail Address of the Petitioner.

Mr. Tim Sanchez
Sanchez Brothers Farming
11300 Houston Avenue
Hanford, CA 93230
Tel. (559) 582-1728
Tim@Sanchezbros.com

2. RWQCB Order Which the State Is Requested to Review and Copy of the Order.

Attached as Exhibit A is a copy of the Order dated 17 March 2009 which the State is requested to review. Specifically, Petitioner requests review of RWQCB's issuing the order against it. Petitioner contends that, pursuant to RWQCB rules, as the landowner, it is only secondarily liable for any investigation or cleanup. Consequently, Petitioner is not required to take any action until the other parties named in the order, The Valero Companies and Kings Waste and Recycling Authority, default on their cleanup obligations. RWQCB cannot issue the Order against Petitioner until it determines that the other two parties have defaulted on their cleanup obligations. No such determination had been made in this matter.

3. The date the RWQCB acted.

The RWQCB acted on or about March 17, 2009.

4. A statement why the action was inappropriate or improper.

Petitioner owns the land upon which Pits are located. Petitioner was unaware that the Pits were on the farmland until several years after the property was purchased. Petitioner never used the Pits for any purpose.

Petitioner has reviewed the RWQCB files and other records in this case. Based upon Petitioner's review, it appears that The Valero Companies and/or Kings Waste and Recycling Authority used the Pits to dispose of waste. In 1971, for example, the State Department of Health Services, the predecessor to the Department of Toxic Substances Control, noted that the Pits were being used for oil waste, including mercaptans, by Valero. The results of Petitioner's investigation have been given to the RWQCB.

Based on the above facts, Petitioner contends that it is at most only secondarily liable for the investigation and cleanup of the Pits. Petitioner only has responsibility for the Pits if and when The Valero Companies and Kings Waste and Recycling Authority default on their investigation and cleanup obligations. Petitioner contends that RWQCB's action in naming it as a responsible party in the Section 13267 Order at this time is arbitrary and capricious.

5. How the Petitioner is aggrieved.

Petitioner is aggrieved because it will have to spend time, money and effort in responding to the Order. If the other parties named in the Order are able perform their cleanup obligations, which is likely, Petitioner will not have to spend any such time, effort and money for investigation and cleanup of releases which it did not cause.

6. The action the Petitioner requests the State Water Board to take.

Petitioner asks that the RWQCB be directed to relieve Petitioner of any obligation under the Section 13267 Order until there has been a determination that The Valero Companies and Kings Waste and Recycling Authority are unable to complete their cleanup obligations.

7. Points and authorities for any legal issues raised in the petition.

The RWQCB has determined that current landowners are only secondarily liable in some cases and thereby set the precedent applicable in this case. See: Cleanup and Abatement Order No. R5-2006-0719 for Safeway, Inc., Ultramar, Inc., Marquez Brothers International, Inc. Concerning Petroleum Hydrocarbon Release-Commingle Plume West 5th and Williams Streets, Hanford, Kings County (2006) ("Marquez Case") (current landowner did not cause or permit the activity that resulted in the discharge; because Ultramar and Safeway are capable of performing investigation and cleanup, current landowner is placed in a position of secondary responsibility); and Cleanup and Abatement Order No. R5-2007-0717 for Tom Green, Trustee of the Ethyl E. Green Trust and Shirley Chacon former Chacon's Auto Clinic Shasta Lake City (Central Valley Region) (2007) ("Green Case") (current landowner secondarily liable for contamination from leaking USTs because no evidence fueling was performed during her ownership, USTs were abandoned prior to her ownership and she did not operate former service station at property.) Copies of these Marquez Case and the Green Case will be presented at the time of hearing on this matter.

8. A statement that copies of the petition have been sent to the Regional Water Board and to the dischargers.

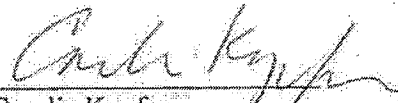
Copies of this petition have been mailed to the Executive Officer of the RWQCB, The Valero Companies and Kings Waste and Recycling Authority on April 9, 2009.

9. A statement that the issues raised in the petition were presented to the RWQCB.

The issue of secondary liability was presented to the RWQCB by letter from Petitioner's counsel dated December 18, 2009. Petitioner reserves the right to enter a copy of that letter as an Exhibit at the time of hearing on this matter.

Dated: April 9, 2009

Respectfully submitted



Coralie Kupfer
Kupfer Law & Mediation



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board Central Valley Region

Karl E. Longley, ScD, P.E., Chair

1685 E Street, Fresno, California 93706
(559) 445-5116 • Fax (559) 445-5910
<http://www.waterboards.ca.gov/centralvalley>



Arnold
Schwarzenegger
Governor

FILE

17 March 2009

Sanchez Brothers Farming, Inc.
11300 Houston Avenue
Hanford, CA 93230

Certified Mail No.
7006 2760 0000 0653 9636

The Valero Companies
Mr. Robert Ehlers
P.O. Box 696000
San Antonio, TX 78269-6000

Certified Mail No.
7006 2760 0000 0653 9643

Kings Waste and Recycling Authority
7803 Hanford-Armona Rd.
Hanford, CA 93230

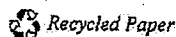
Certified Mail No.
7006 2760 0000 0653 9650

CALIFORNIA WATER CODE DIRECTIVE PURSUANT TO SECTION 13267, FORMER BRICK-LINED PITS SOUTH OF HOUSTON AVENUE LANDFILL, HANFORD, KINGS COUNTY (SECTION 13267 ORDER)

You are responsible or are suspected of being responsible for a release of volatile organic compounds (VOCs), including total petroleum hydrocarbons (TPH), which could have affected waters of the State and thus are herein directed to submit a technical report with a professional's proposal to conduct an investigation of the release. The facts and resulting directive follow:

1. Sanchez Brothers Farming, Inc., currently owns the above-referenced property (APN 018-122-012), Hanford, Kings County (hereafter Site) and have owned the Site since 1993. Dennis Sanchez owned the Site from 1975 to 1993. Past owners of the site include Ermelinda Juarez (1973 to 1975), Jose and Bertha Arellano (1949 to 1973), Antonio and Alvira Gonzalez (1944 to 1949), Mae Blissitt (1943 to 1944), and A. Hidalgo (1942 to 1943).
2. Two brick-lined pits existed on the property as early as 1950. The historical use of these pits is not well documented; however, they are suspected of being used by the county (Kings Waste and Recycling Authority) and Valero (the Valero Companies and its various predecessors Caminol Oil Company, Beacon oil, and Ultramar Oil Company, are collectively referred to as Valero) to dispose of solid waste and refinery waste, respectively. The State Department of Health Services investigated the brick-lined pits in 1971, noting the brick-lined pits as being used for oil waste, including mercaptans, by Valero.

California Environmental Protection Agency



3. Soil is impacted on site. Soil samples taken in the area had concentrations of total petroleum hydrocarbons as diesel (TPHD) as high as 7,200 milligrams per kilogram (mg/kg) and total petroleum hydrocarbons as jet fuel (TPHjf) as high as 11,000 mg/kg.
4. Groundwater has not been sampled beneath the former pits. Previous groundwater studies at the property adjacent to the north (former Houston Avenue Landfill) indicated groundwater was impacted with petroleum wastes. Drinking water wells were impacted along Avenue 10 ½; consequently, the City of Hanford extended the municipal distribution line to supply these residences. The status of the previous wells is unknown.
5. The Site is south of the Houston Avenue Landfill, north of the wastewater treatment plant, and west of residential properties. The depth to groundwater is approximately 44 feet below ground surface with a groundwater gradient to the east. Numerous wells exist in proximity of the site, including irrigation and domestic wells (downgradient).
6. The Regional Water Board possesses authority to require technical reports that derives from section 13267 of the California Water Code (CWC), which refers to regional board and specifies, in part, that:
 - (a) A regional board, ...in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region.
 - (b)(1) In conducting an investigation specified in subdivision (a), the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposes to discharge waste within its region...that could affect the quality of waters within its region shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.
7. The Regional Water Board adopted the Water Quality Control Plan for the Tulare Lake Basin, Second Edition, (Basin Plan), which designates beneficial uses of water. All groundwater within the vicinity of the site is designated as having a beneficial use of municipal and domestic water supply (MUN).
8. The foregoing establishes that Sanchez Brothers Farming, Inc., Valero, and Kings Waste and Recycling Authority, are responsible parties that have discharged or are suspected of having discharged compounds that have affected or could affect the quality of groundwater designated MUN. An investigation to assess the extent and magnitude of the release in soil and groundwater, and whether it warrants a full investigation and possible cleanup and remediation, is reasonable and appropriate. The cost of a technical report containing results of such an investigation is justified by the benefit to be derived from such information. The responsible parties are encouraged to work together to avoid unnecessary duplication.
9. State Water Resources Control Board (State Water Board) Resolution 92-49, in part, directs Regional Water Boards that require a 13267 investigation to, among other things:

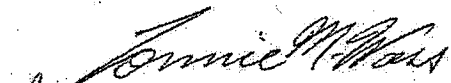
- a. Require the responsible parties to conduct investigations in sequence.
- b. Require prior submittal of a written work plan from the responsible parties for elements and phases of investigation.
- c. Review and concur with adequate work plans prior to initiation of investigation to the extent practicable, where an adequate work plan is one that includes or references, at least, a comprehensive description of proposed investigative activities, a sampling and analysis plan, a quality assurance project plan, a health and safety plan, and a commitment to implement the work plan.
- d. Require responsible parties to provide documentation that reports are prepared by qualified professionals and to incorporate a statement of qualifications of the responsible professionals in the report.

Under the prescribed authority of CWC section 13267, you are hereby directed to submit, by **15 May 2009**, a technical report that contains a written work plan prepared by a qualified professional, proposing a systematic and logical sequence of tasks with a proposed schedule to investigate possible releases compounds to soil and groundwater from the subject property.

If you fail to furnish the required report, or you submit substantially incomplete or false information as a report, you will be in violation of CWC section 13267(b). As the site involves discharge of hazardous waste, in such an event civil liability may be administratively imposed in accordance with section 13268(d) in an amount that shall not exceed five thousand dollars (\$5,000) for each day in which the violation occurs. Depending on the circumstances, the Regional Water Board can seek greater civil liability through superior court (see Article 5 commencing with section 13350). Knowing failure or refusal to furnish technical reports required by CWC section 13267(b) or knowing falsification of information provided in those reports also subjects you to criminal penalties pursuant to CWC section 13268(e).

Any person affected by this action of the Regional Water Board may petition the State Water Board to review the action in accordance with CWC section 13320 and Title 23, California Code of Regulations, section 2050. The petition must be received by the State Water Board, Office of Chief Counsel, P.O. Box 100, Sacramento, CA 95812 within 30 days of the date of this directive. Copies of the law and regulations applicable to filing petitions are available at http://www.waterboards.ca.gov/public_notices/petitions/water_quality/ and also will be provided upon request.

If you have any questions regarding this matter, please contact Russell Walls of this office at (559) 488-4392 or at rwalls@waterboards.ca.gov.


Pamela C. Creedon
Executive Officer

cc: Kings County Environmental Department of Public Health, Hanford

